IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3290 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DEPUTYGENERALMANAGER & 2 - Petitioner(s)

Versus

RAMESHBHAI ATMARAM VAGHELA & 2 - Respondent(s)

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Appearance :

MR AJAY R MEHTA for Petitioner No(s).: 1,2.

MR TR MISHRA for Respondent No(s).: 1,2.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 30/06/2005

ORAL JUDGMENT

1.0 The petitioners have challenged the order dated 20.09.1999 passed by the Central Industrial Tribunal (for

short, “the Tribunal”), Ahmedabad in Reference (ITC) No.49 of 1991, whereby the said reference was partly allowed.

2.0 The petitioner herein is a Public Limited Company and the respondents are the employees of the Contractors who were given certain contracts in the petitioner Corporation. It is the case of the respondents that their services were orally terminated by the petitioner w.e.f. 03.12.1988.

2.1 Feeling aggrieved by the said action, the respondents raised dispute which was referred to the Central Industrial Tribunal, Ahmedabad, by way of a reference. The Tribunal vide order dated 20.09.1999, partly allowed the said reference.

3.0 Before proceeding with the matter, it is required to be noted that respondent no.1 herein is already employed by the Ministry of Railways pursuant to his dismissal from service by the petitioner Corporation, and therefore, this Court is now not required to consider the case of respondent no.1 herein. Hence, the order of the Tribunal is quashed qua respondent no.1 herein and the matter is considered only qua respondent no.2.

4.0 Mr. A R Mehta learned advocate for the petitioners has contented that the respondents herein were employees of the Contractor and the Tribunal ought to have appreciated the fact that the respondents themselves had admitted the contract entered into between them with the petitioner Corporation. He has submitted that the said fact proved beyond doubt that the respondents were employees of the contractors and were not entitled to any reliefs claimed in the reference.

4.1 Mr. Mehta has further contended that the Tribunal has proceeded on the basis of the Government Resolutions which were subsequently cancelled and on the basis of a decision of the Apex Court in the case of Air India Statutory Corporation v. United Labour Union and Ors..

5.0 I have heard learned counsel for the parties and perused the documents placed on record. The principle laid down in the aforesaid decision has been over-ruled by the Apex Court in a subsequent decision in the case of Steel Authority of India Ltd. & ors. v. National Union Waterfront Workers & ors. Reported in (2001) 7 S.C.C. pg.1. It is required to be noted that the respondents had worked with the petitioner during the period from 1980 to 1988. As per the R & P Regulation, 1980 and Standing Orders of the petitioner Commission, the services of the respondents could not be terminated without following the due process of law as provided under Section 25(F) of the Industrial Disputes Act, 1947. Hence, the action of the petitioner terminating the services of the respondents w.e.f. 03.12.1988 is illegal.

5.1 In my opinion, the Tribunal was completely justified in granting reinstatement to the respondents workmen. Hence, the order of the Tribunal granting reinstatement in service to the respondents is required to be confirmed.

6.0 However, Mr. Mehta learned advocate for the petitioner has submitted that the Tribunal ought not to have awarded back wages to the respondents since they had not worked for the said period. The contention raised by Mr. Mehta is required to be accepted in view of the principle laid down

by the Apex Court that a workman shall be entitled for wages only if he has worked for the said period. Thus, the Tribunal ought not to have granted back wages to the respondent.

7.0 In above view of the matter, this petition is partly allowed. The impugned order of the Tribunal as regards directing the petitioner Corporation to reinstate the respondent no.2 - workmen in service is confirmed and the order as regards awarding back wages is quashed and set aside. The petitioner is directed to grant continuity in service to respondent no.2 herein. Since continuity in service has been granted to respondent no.2, it is clarified that respondent no.2 shall be given only the monetary benefits flowing thereto and promotions shall be given considering his actual service only. The petitioner shall reinstate respondent no.2 within a period of one month from the receipt of writ of this order and shall grant the benefits from the date of the publication of the award of the Tribunal till the said payment is realized within a period of six months thereafter. It is clarified that this order is applicable qua respondent no.2 only since respondent no.1 is already employed in the Ministry of Railways. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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